


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: June 4, 1998

SUBJECT: Community Development Quotas

ESTIMATED TIME 1 HOUR
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**ACTION REQUIRED**

- (a) Final review of BSAI Amendment 45 - continuation of BSAI Pollock CDQ Program.
- (b) CDQ Implementation Committee Report.
- (c) Status of implementation.

(a) Final review of BSAI Amendment 45 to continue BSAI pollock CDQ program

BSAI Plan Amendment 45 would recommend that the Secretary extend the pollock CDQ program at the existing level of 7.5 percent of the pollock TAC, without a sunset date. BSAI pollock are included in the multi-species CDQ program scheduled for implementation in October 1998. The MSFCMA limits the amount of TAC that may be allocated to a pollock CDQ reserve to not more than 7.5 percent of the TAC through October 1, 2001. In September 1997, the Council decided to limit the alternatives in the reauthorization of the pollock CDQ program to the "no action" alternative and continuation of the pollock CDQ program, without a sunset date, at 7.5 percent. The public review draft was mailed on May 7, 1998.

The alternatives include:

Alternative 1: No action.

Alternative 2: Permanently extend the BSAI pollock CDQ program at 7.5 percent of the total allowable catch.

Staff also seeks Council guidance on the development of plan amendment language for this amendment. The CDQ program is currently described in numerous parts of Section 14 of the FMP (Item C-5(a)(1)). Staff has developed suggested plan amendment language to condense these into a new section 14.4.7.3, Western Alaska Community Development Program (Item C-5(a)(2)).

(b) CDQ Implementation Committee Report

The CDQ Implementation Committee convened its second meeting on May 1 in Juneau. The committee minutes are attached as Item C-4(b). A third meeting is scheduled for June 18 to develop recommendations to NMFS on whether the small boat halibut CDQ program would be best administered under the RAM program (status quo) or under the Sustainable Fisheries CDQ program, where new reporting requirements would have to be implemented.

(c) Status of Implementation

The final rule for the multispecies CDQ program was published on June 4. The MS-CDQ fisheries are scheduled to commence on October 1. Community development plans will be due to NMFS in early July for review. NMFS will publish the notice approving the community development plans and allocations to specific CDQ groups prior to October 1.

14.0 MANAGEMENT REGIME

14.4 Management Measures – Domestic Fishery

14.4.1 Permit Requirements

14.4.1.2.2.1 CDQ Allocation.

- (1) CDQs will be issued for 7.5% of the TAC for all BSAI groundfish species not already covered by another CDQ program (pollock and longline sablefish). A pro-rata share of PSC species will also be issued. PSC will be allocated before the trawl/non-trawl splits. The program will be patterned after the pollock CDQ program (defined in section 14.4.11.6), but will not contain a sunset provision. Also, Akutan will be included in the list of eligible CDQ communities.
- (2)

14.4.2 Prohibited Species

14.4.3 Fishing Area Restrictions

14.4.4 Gear Restrictions

14.4.5 Reporting Requirements

14.4.6 Domestic Observer Program

14.4.7 Effort Limitation Programs

14.4.7.1 MANAGEMENT OF FIXED GEAR SABLEFISH FISHERIES

Beginning with the 1994 fishing season, the directed fixed gear sablefish fisheries will be managed under an Individual Fishing Quota (IFQ) program. This form of limited entry will replace the current open access fisheries for sablefish in the Bering Sea/Aleutian Islands and is described in this section.

14.4.7.1.1 DEFINITIONS

14.4.7.1.2 MANAGEMENT AREAS

14.4.7.1.3 INITIAL ALLOCATION OF QUOTA SHARES

14.4.7.1.4 TRANSFER PROVISIONS

14.4.7.1.5 USE AND OWNERSHIP PROVISIONS

14.4.7.1.6 ANNUAL ALLOCATION OF QS/IFQ

14.4.7.1.7 GENERAL PROVISIONS

14.4.7.1.8 COMMUNITY DEVELOPMENT QUOTAS

- (3) (A) **PURPOSE AND SCOPE.** The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and

reasonable opportunity to participate in the Bering Sea/Aleutian Islands sablefish fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities. Residents of western Alaska communities are predominantly Alaska Natives who have traditionally depended upon the marine resources of the Bering Sea for their economic and cultural well-being. The Western Alaska Community Development Quota Program is a joint program of the Secretary and the Governor of the State of Alaska. Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands sablefish fisheries which have been foreclosed to them because of the high capital investment needed to enter the fishery.

(4) The NMFS Regional Director shall hold the designated percent of the annual total allowable catch (TAC) of sablefish for each management area in the Bering Sea and Aleutian Islands for the western Alaska halibut community quota as noted below. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use. The portions of sablefish TACs for each management area not designated to CDQ fisheries will be allocated as QS and IFQs and shall be used pursuant to the program outlined in the preceding Sections.

(B) WESTERN ALASKA SABLEFISH COMMUNITY QUOTA

(5) (1) The NMFS Regional Director shall hold 20 percent of the annual fixed-gear Total Allowable Catch of sablefish for each management area in the Bering Sea/Aleutian Islands Area for the western Alaska sablefish community quota.

(6) (2) Not more than 33 percent of the total Western Alaska community quota may be designated for a single CDQ applicant, except that if portions of the total quota are not designated by the end of the second quarter, applicants may apply for any portion of the remaining quota for the remainder of that year only.

(7) (3) Those persons that would otherwise have received a full complement of sablefish QS in the Bering Sea and Aleutian Islands area, but would receive less due to the provisions of CDQs, will be partially compensated and the cost of the compensation will be borne equally by all initial sablefish QS/IFQ recipients. In general this compensation plan will issue incremental amounts of QS in each non-CDQ area to each disadvantaged person.

(8) (C) ELIGIBLE WESTERN ALASKA COMMUNITIES. The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be eligible for the western Alaska community quota program (hereinafter "the Program"):

(1) be located on or proximate to the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;

(2) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;

- (3) its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;
- (4) has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the Bering Sea/Aleutian Islands because of a lack of sufficient funds for investing in harvesting or processing equipment; and
- (5) has developed a community development plan approved by the Governor, after consultation with the North Pacific Fishery Management Council.

14.4.7.2 Groundfish License Limitation Program

14.4.8 Inseason Adjustments

14.4.9 Gear allocations

14.4.10 Utilization and seasonal allowances of the pollock TAC

14.4.11 Inshore/offshore allocations of pollock

14.4.11.1 Definitions

14.4.11.2 Declarations and operating restrictions

14.4.11.3 Reapportionment of unused allocations

14.4.11.4 Allocations

14.4.11.5 Bering Sea Harvesting Vessel Operational Area

14.4.11.6 Western Alaska Community Quota

(9) For a Western Alaska Community Quota, 50% of the BSAI pollock reserve as prescribed in the FMP will be held annually until the end of the third quarter. This held reserve shall be released to communities on the Bering Sea Coast which submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the released reserve. Any of this held pollock reserve not released by the end of the third quarter shall be released in accordance with reserve release provisions of the FMP and federal regulations, and in accordance with the inshore and offshore formula established in section 14.4.11.4.

(10) The Western Alaska Community Quota program will be structured such that the Governor of Alaska is authorized to recommend to the Secretary that a Bering Sea Rim community be designated as an eligible fishing community to receive a portion of the reserve. To be eligible a community must meet the specified criteria and have developed a fisheries development plan approved by the Governor of Alaska. The Governor shall develop such recommendations in consultation with the Council. The Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.

**14.4.11.7 Duration**

(11) **Inshore-offshore allocations of pollock and the Western Alaska Community Quota program shall cease to be a part of this FMP either (1) at midnight on December 31, 1995; or (2) earlier if replaced with another management regime approved by the Secretary.**

**14.4.12 Experimental fishing permits**

**14.5 Management Measures -- Foreign Fisheries**

**14.6 Operational Needs and Costs (1000's dollars)**

**14.7 Management Measures to Address Identified Habitat Problems**

**14.8 Other Measures**

14.0 MANAGEMENT REGIME

14.4 Management Measures -- Domestic Fishery

14.4.7 Effort Limitation Programs

14.4.7.1 MANAGEMENT OF FIXED GEAR SABLEFISH FISHERIES

[text between title above and section 14.4.7.1.7 is not changed]

[FMP amendment would move Section 14.4.7.1.8 COMMUNITY DEVELOPMENT QUOTAS to a new 14.4.7.3, except the following paragraph which currently is 14.4.7.1.8 (B)(3) and would be moved within the section on management of the fixed gear sablefish fisheries to 14.4.7.1.7 General Provisions as (7). ]

14.4.7.1.7 GENERAL PROVISIONS

[text in (1) through (6) not changed, add new section (7)]

(6) (7) **Those persons that would otherwise have received a full complement of sablefish QS in the Bering Sea and Aleutian Islands area, but would receive less due to the provisions of CDQs, will be partially compensated and the cost of the compensation will be borne equally by all initial sablefish QS/IFQ recipients. In general this compensation plan will issue incremental amounts of QS in each non-CDQ area to each disadvantaged person.**

14.4.7.2 GROUND FISH LICENSE LIMITATION PROGRAM

(text of this section not included here)

[Add new section 14.4.7.3]

14.4.7.3 WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

[the following two paragraphs are from the fixed gear sablefish section 14.4.7.1.8 with changes noted in bold and strike-out]

(2) 14.4.7.3.1 **PURPOSE AND SCOPE.** The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands ~~sablefish~~ **groundfish** fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities. Residents of western Alaska communities are predominantly Alaska Natives who have traditionally depended upon the marine resources of the Bering Sea for their economic and cultural well-being. The Western Alaska Community Development Quota Program is a joint program of the Secretary and the Governor of the State of Alaska. Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands ~~sablefish~~ fisheries which have been foreclosed to them because of the high capital investment needed to enter the fishery.

(3)

The NMFS Regional Director shall hold the designated percent of the annual total allowable catch (TAC) of groundfish ~~sablefish~~ for each management area in the Bering Sea and Aleutian Islands for the western Alaska halibut community quota as noted below. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use. [The last sentence of this paragraphon purpose and scope is proposed is specific to fixed gear sablefish CDQs so is proposed to be moved to the last sentence of the single paragraph in the new section 14.4.7.3 on fixed gear sablefish CDQ allocations.]

[the following paragraph is moved from the pollock CDQ section 14.4.11.6, it is the second paragraph of that section. The first paragraph of 14.4.11.6 is added in the section 14.4.7.3.4 below on pollock CDQ allocations]

(9)

The Western Alaska Community Quota program will be structured such that the Governor of Alaska is authorized to recommend to the Secretary that a Bering Sea Rim community be designated as an eligible fishing community to receive a portion of the reserve. To be eligible a community must meet the specified criteria and have developed a fisheries development plan approved by the Governor of Alaska. The Governor shall develop such recommendations in consultation with the Council. The Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.

[the following paragraph is from the fixed gear sablefish section 14.4.7.1.8(B)(2) with no changes]

(5)

Not more than 33 percent of the total Western Alaska community quota may be designated for a single CDQ applicant, except that if portions of the total quota are not designated by the end of the second quarter, applicants may apply for any portion of the remaining quota for the remainder of that year only.

[the following paragraph is from the fixed gear sablefish section 14.4.7.1.8(C) with no changes]

(7)

**14.4.7.3.2 ELIGIBLE WESTERN ALASKA COMMUNITIES.** The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be eligible for the western Alaska community quota program (hereinafter "the Program"):

- (1) be located on or proximate to the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;
- (2) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;
- (3) its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;
- (4) has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the Bering Sea/Aleutian Islands because of a lack of sufficient funds for investing in harvesting or processing equipment; and

- (5) has developed a community development plan approved by the Governor, after consultation with the North Pacific Fishery Management Council.

[the following sentence is from section 14.4.1.2.2.1 with no changes]

Also, Akutan will be included in the list of eligible CDQ communities.

[new section number and title using text previously in the fixed gear sablefish section. The first sentence is from 14.4.7.1.8(B)(1) with no changes and the second sentence is the last sentence of the purpose and scope section in 14.4.7.1.8(A) with a change to reference the fixed gear sablefish IFQ section of the FMP]

#### 14.4.7.3.3 FIXED GEAR SABLEFISH CDQ ALLOCATION. [section number and title added]

(4) The NMFS Regional Director shall hold 20 percent of the annual fixed-gear Total Allowable Catch of sablefish for each management area in the Bering Sea/Aleutian Islands Area for the western Alaska sablefish community quota. The portions of sablefish TACs for each management area not designated to CDQ fisheries will be allocated as QS and IFQs and shall be used pursuant to the program outlined in the preceding Section 14.4.7.1.

[new section number and title using text previously in the first paragraph of the inshore/offshore/pollock CDQ section section 14.4.11.6 with no changes]

#### 14.4.7.3.4 POLLOCK CDQ ALLOCATION

(8) For a Western Alaska Community Quota, 50% of the BSAI pollock reserve as prescribed in the FMP will be held annually until the end of the third quarter. This held reserve shall be released to communities on the Bering Sea Coast which submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the released reserve. Any of this held pollock reserve not released by the end of the third quarter shall be released in accordance with reserve release provisions of the FMP and federal regulations, and in accordance with the inshore and offshore formula established in section 14.4.11.4.

[new section number and title using text previously in 14.4.1.2.2.1]

#### 14.4.7.3.5 MULTISPECIES GROUND FISH AND PROHIBITED SPECIES CDQ ALLOCATIONS

(10) CDQs will be issued for 7.5% of the TAC for all BSAI groundfish species not already covered by another CDQ program (pollock and longline sablefish). A pro-rata share of PSC species will also be issued. PSC will be allocated before the trawl/non-trawl splits. The program will be patterned after the pollock CDQ program (defined in section 14.4.11.6), but will not contain a sunset provision.

[Move 14.4.11.6 to 14.4.7.3.2 and 14.4.7.3.4 and renumber 14.4.11.7]

MAKE THE FOLLOWING REVISION IN SECTION 14.4.11.7 (INSHORE/OFFSHORE SECTION)

#### 14.4.11.6 Duration [formerly 14.4.11.7]

(12) Inshore-offshore allocations of pollock and the ~~Western Alaska Community Quota~~ program shall cease to be a part of this FMP either (1) at midnight on December 31, 1995; or (2) earlier if replaced with another management regime approved by the Secretary.



**Community Development Quota Implementation Committee  
Meeting Minutes  
May 1, 1998**

The CDQ Implementation Committee meeting convened Monday, May 1, at 8:30 am at the NMFS Regional Office, Juneau. Members attending were CAPT Vince O'Shea (chairman), Julie Anderson, Sally Bibb, Larry Cotter, Glenn Haight, John McNair, and Paul Peyton. Agency staff present were Kim Rivera, and by telephone: Jane DiCosimo, Joe Terry, Gregg Williams.

I. Sally Bibb provided a brief update on the implementation schedule for the multi-species (MS) CDQ program. If the final rule is published by June 1, community development plans (CDPs) would be due by July 1 for an implementation date of the multi-species program of October 1. Existing CDPS may be amended to add the MS species.

II. In March, the committee recommended that the Council initiate an amendment to the CDQ regulations to allow the CDQ trawl fisheries to commence fishing on January 1. The Council referred the issue back to the committee to further explore the impacts of the earlier season opening on chinook salmon and marine mammals. The committee discussed the likelihood that chinook would affect pollock, perhaps with the only adverse impact on shore plant operations. The committee noted that with individual CDQ accounting, each CDQ group will be allocated its own chinook salmon PSQ. Once the chinook salmon PSQ for a particular CDQ group is reached, vessels fishing for that CDQ group will be prohibited from fishing in the Chinook Salmon Savings Areas. The committee identified three management alternatives:

Alternative 1. Status quo.

Alternative 2. Allow all CDQ fisheries to start on January 1

Alternative 3. Allow all CDQ fisheries, except for pollock, on January 1

The analysis should address the original rationale for the January 20 trawl season opening date, how CDQ operations differ from open access fisheries, a description of the target fisheries and economic impacts (e.g., shift in efforts, limited options for other open windows due to partner participation in other open access fisheries, market considerations) of the January 20 start date on the CDQ groups, and interactions with chinook salmon and marine mammals.

III. (1) The committee discussed that the small size (7.5%) of CDQs and PSQs divided among the seven groups, without sharing, are so small to enforce and manage, that the chance of harm to the resource is limited. Most of enforcement and monitoring effort is to check that the groups had the CDQ for the harvest that was taken, and is done retroactively through observer monitoring and the paperwork trail, not at sea.

Sally Bibb noted that herring, a PSC species, is not currently included as a PSQ species in the final rule due to conflict between NMFS's proposed requirement that herring PSQ be retained and delivered to a shore plant for account and the State of Alaska's prohibition against retaining herring on vessels using trawl gear. This conflict needs to be resolved before herring can be included in the MS CDQ program. The committee discussed the option of not allocating some species groups to the MS CDQ program if the Council did not want to hold each CDQ group strictly accountable for catch of all TAC species or species groups (i.e. squid or the other species category). Larry Cotter raised another issue: whether PSQs are limited to 7.5% by the CDP or under a total umbrella of 7.5%.

The committee will review a draft letter by Larry Cotter and Paul Peyton, to send to NOAA General Counsel on these three issues:

- Must every species with a TAC have a CDQ allocation?
- Does the 7.5 % apply to the umbrella as a whole or can individual CDPs exceed their cumulative PSQs (not retained but counted against the total).
- Did the Council cast a firm and fixed 7.5% allocation by species (does the Council allow an overage/underage policy?).

III. (2) The committee discussed the effects of applying halibut mortality rate assumptions from open access fisheries on the CDQ fisheries. The CDQ representatives are going to work with the IPHC to try to develop recommendations for halibut mortality rate assumptions in the future. Ms. Bibb indicated that NMFS would prefer to apply an average mortality rate by gear type for the CDQ fisheries, but will use the mortality rate assumptions by target fishery used for the open access fisheries unless the CDQ groups and the IPHC derive a justifiable alternative that is simpler.

For a long term solution, the committee recommends that the Council initiate a regulatory amendment to be performed by IPHC staff to determine the appropriate method of accounting for halibut mortality in the CDQ fisheries. Gregg Williams reported that he could prepare a preliminary analysis for plan team review in September for Council review in October to set CDQ halibut rates during final specifications. The committee identified three management alternatives for the analysis:

- Alternative 1. Apply mortality rate assumptions by gear type.
- Alternative 2. Apply mortality rate assumptions from open access fisheries
- Alternative 3. Apply halibut mortality based on observer sampling.

III. (3). The committee briefly discussed whether to manage the CDQ halibut fishery under RAM or the MS CDQ program. A regulatory amendment is required under either alternative to address programmatic requirements. NMFS would initiate this amendment and schedule public comment during the October Council meeting, for implementation for 1999. The committee deferred further discussion on this issue until its next meeting to receive reports from RAM and Enforcement staff.

IV. Kim Rivera summarized the NMFS draft CDQ cost recovery program. She plans to have a proposed rule published in September; a comment period to overlap with the October Council meeting; and a final rule published by December 1 for implementation by January 1. Kim reported that the Council has designated a Council committee to also review the CDQ and IFQ cost recovery plan. She reported that the program goal was to recover costs unique to managing and enforcing the CDQ program. The program could recover actual costs and can tax up to 3% of ex-vessel value. She described: (1) that the tax will be based on ex-vessel value; (2) the type of costs that the tax will be used to pay for; and (3) the tax credit aspect. NMFS staff reported that the Magnuson-Stevens Act explicitly stated that the CDQ fee be based on 'ex-vessel value.'

Glenn Haight reported that he has met with CDQ groups to discuss a CDQ fee collection program. CDQ representatives on the committee expressed a strong desire for accountability of the draft NMFS budget, and a legal opinion of whether the fee could be based on the CDQ royalty. Using the royalty as the base for the fee, results in CDQ fees of \$900,000, and not the \$1,300,000 calculated by NMFS based on ex-vessel value. The committee discussed:

- Magnuson-Stevens Act is clear that the fee should be based on ex-vessel value (the rate could be based on royalties and subsequently converted to a percentage of ex-vessel value)
- Both the NMFS and CDQ budgets should be examined by the committee
- The fees should be based on the catch, not the quota
- Fees should be set by species (there will be a differential on cost and margin by species; the cost may exceed value for some species (e.g., yellowfin), so the CDQ groups won't fish low margin species).

The committee recommend that a CDQ fee oversight committee be established prior to publication of the proposed rule. This committee would meet four to five times over the summer to examine the NMFS budget and CDQ group proposed budget.

Next meeting: possibly June 18-19 in Juneau to discuss: 1) halibut small-boat fleet composition and enforcement issues related to possibly moving the program out of the RAM Division and 2) CDQ fee recovery program.

The committee adjourned at approximately 1:15 pm.



UNITED STATES DEPARTMENT OF  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

JUNE 1998

Supplemental

June 2, 1998

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JUN - 3 1998

N.P.F.M.C.

Mr. Richard B. Lauber  
Chairman, North Pacific Fishery  
Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Re: Bifurcation of IFQ and CDQ Cost Recovery Fee Programs

Dear Rick:

After considerable thought, discussion, and analysis of priorities and staff commitments, the National Marine Fisheries Service (NMFS) has decided to bifurcate the cost recovery fee programs for the Individual Fishing Quota (IFQ) program and the Community Development Quota (CDQ) program.

My reasons for this bifurcation are as follows:

- 1) Unresolved CDQ fee collection and revenue distribution issues would require more time than is available to meet a preferred target implementation date of January 1, 1999.
- 2) Given CDQ fee deductions allowed by the Magnuson-Stevens Act, it is very possible that no net CDQ fees would be collected for CDQ fish harvested in 1999.
- 3) Continued development of a CDQ fee program parallel to the development of an IFQ fee program may jeopardize NMFS' ability to collect IFQ fees for IFQ fish harvested in 1999.

NMFS will continue to work with the North Pacific Fishery Management Council's IFQ/CDQ Cost Recovery Fee Committee regarding fee issues. The bifurcation of the fee programs will facilitate NMFS's ability to implement the IFQ fee collection program by March 15, 1999, when the IFQ fisheries open.

We will apprise you of the status of the IFQ and CDQ fee programs as we progress on their development and implementation.

Sincerely,

*Steve*  
Steven Pennoyer  
Administrator, Alaska Region



cc: Kevin O'Leary, Council's IFQ/CDQ Fee Committee Chairperson  
Vince O'Shea, Council's CDQ Implementation Committee  
Chairperson  
Earl Krygier, ADF&G  
Lamar Cotten, State of Alaska, DCRA  
Lisa Lindeman, GCAK

**COPY FOR YOUR  
INFORMATION**

**Summary of IFQ/CDQ Fee Collection Committee Meeting**

May 19, 1998

In April 1998 the Council established an industry Committee to provide input to NMFS regarding development of the IFQ/CDQ fee program (cost recovery program) mandated by the Magnuson-Stevens Act. While this is a Secretarial program, and requires no formal Council action, NMFS is keeping the Council closely involved in its development through regular updates to the Council and now through the Council's IFQ/CDQ Fee Committee. This committee will address details for both the IFQ and CDQ aspects of the cost recovery program. The Council also has a separate CDQ Implementation Committee, which is dedicated to resolving implementation details of the multi-species CDQ program slated for 1998 implementation. The Fee Committee met on May 19, 1998 in Juneau - the following is a list of attendees and summary of that meeting.

Committee members: Kevin O'Leary (Chair - NPFMC/KVOA), Joe Kyle (NPFMC/APICTA), Gerry Merrigan (PVOA), Krys Norosz (Icicle Seafoods), Bob Alverson (FVOA), John Sevier (Sitka Sound Seafoods), Paul Peyton (BBEDC)

NMFS staff: Joe Terry, Kim Rivera, Shawn Carey, Jessie Gharrett, Jay Ginter

Other: Chris Oliver (NPFMC), John McNair (ADF&G), Elaine Dinneford (CFEC), Vince O'Shea (USCG), Heather Gilroy (IPHC), Rick Lauber (NPFMC)

**Determination of Exvessel Value**

The majority of this initial meeting was devoted to this issue - how the annual fees will be established/collected, and the use of actual vs standard prices upon which to base the fee. While NMFS' initial preference was to base the fee on standardized exvessel prices for each species, the current NMFS position (supported by the Committee) is to pursue the use of **actual** exvessel prices where possible, and assign a standard price where necessary (for example, where there is no actual sales transaction, such as at-sea processing).

The Committee discussed the difficulties with determining actual prices at time of landing, due to post-season settlements or 'in-kind', non-monetary compensations. The resolution is to try and structure the program such that registered buyers would report in September the aggregate number of pounds bought by species and the amount paid. NMFS would use this information to calculate standard exvessel prices from the industry reported actual prices paid. On an annual basis, registered buyers would submit collected fees (from March through September), based on the total actual amount they paid for fish. If actual exvessel transactions did not occur, the registered buyer would use NMFS' standard prices, based on that year's current prices. Registered buyers would also be responsible for paying fees on 'retros', or post-season adjustments. These payments would be submitted along with the annual fee return payment.

As noted above, the registered buyers would be the collectors of the fee and would be responsible for payment to NMFS, and reporting of the price information. Timing of this reporting is not

finalized, though the Committee suggested such reports would be made from March 15 through September 30, with final report due by October 20 - post-season adjustment reports would come later. NMFS has proposed that, while the registered buyer would collect the fee at the time of the landing, the buyer would be provided adequate time to complete the fee return and submit, with payment, by the end of the year or by January 31 of the following year. The following additional issues were identified by the Committee as important considerations in the establishment of the exvessel values:

\*NMFS would use the net weight pounds of halibut and the round weight pounds of sablefish, as reported on the IFQ landing report, as the fee basis.

\* Standardized prices should reflect regional/geographic differences, and would essentially reflect a weighted average of the prices experienced over the season, in each major regional landings port.

\*IFQ holders who act as their own registered buyer would be responsible for the fee, unless there is another registered buyer involved in an actual sales transaction. If, for example, a fisherman delivered to a Canadian buyer, that fisherman would be the responsible 'registered buyer'.

\* The analyses prepared by NMFS should attempt to quantify how much of the IFQ fish will fall into each category - for example, how much will likely be covered by actual prices, how much be standard prices, how much remains unresolved until year's end (how much of the total IFQ harvest will be subject to post-season adjustments), etc.

The Committee had further discussions regarding exvessel value determinations for the CDQ portion of the fee program. Because of the additional species involved, the treatment may not necessarily be the same as for the IFQ fisheries which are limited to sablefish and halibut. To the extent possible the CDQ fees would also be based on actual prices, though it is recognized that there will be more reliance on standardized prices for the CDQ fisheries. Actual transaction prices are unavailable, or of very limited use, for some species. One suggestion was to use the State of Alaska standards as used for the landings tax (or 80% of that number) as a basis, and adjust the price as appropriate at year's end when relevant price information may be available. The issue of using royalties as the fee basis (instead of exvessel value) was also raised, but discussions among the Committee and staff indicated that such an approach was unlikely to be viable.

#### General CDQ Issues

In addition to the above, some general themes became apparent in regard to the CDQ portion of this program. In essence, the CDQ cost deductions allowed by the Act may equal or exceed the fees collected on CDQ landings. This is not definitively established yet, and will depend on further resolution of exactly which costs are deductible, and which agency expenses are attributable to the CDQ portion of the program. Future price variability and other uncertainties will also affect whether or not the CDQ cost recovery is 'a wash'. It was also raised that a 3% fee could make some groundfish or crab fisheries economically unviable to the CDQ groups, and therefore those fisheries may not take place. Further discussion of these issues is expected at the next Committee/staff meeting.

### NMFS Budget Issues

A major goal of the next Committee meeting is a review of the NMFS budget projections of the costs that this program will attempt to recover. These include RAM Division cost estimates and Enforcement Division cost estimates for administering the IFQ program, and NMFS and State costs (including observers and enforcement) for administering the CDQ program. The Committee would like an opportunity to review, and comment on, the detailed breakdowns of each of these major cost categories. This budget review would also feed into the issue of cost deductions for the CDQ portion of the program, and ultimately help determine the feasibility of the CDQ cost recovery program.

The Committee also discussed the desire to stay involved in the annual budget and fee percentage setting process, much as the OAC would have done under the Research Plan. While the IFQ/CDQ fee program is a Secretarial program, and does not include a formal review role for the Council, NMFS staff advised the Committee that such a process was acceptable to the agency. Under this scenario we would expect an annual review (likely each fall) by the Committee, a report to the Council (at the October meeting), and Council recommendations to the agency regarding budgets and fee percentages for the upcoming year.

### Timing of Implementation

Several issues were discussed regarding timing of implementation. The major aspects are summarized as follows:

\* Initial advice from NOAA GC is that a final rule must be in place before fees can be assessed; therefore, for fees to be assessed on 1999 landings, a rule must be in place by March of 1999 (for the IFQ fisheries). NMFS staff advised that this is still possible, but would be tight.

\* Mid-year implementation is not likely a viable option, due to fairness issues - only fishermen making landings after the rule is promulgated would be subject to the fee in this instance.

\* It may be necessary to bifurcate the CDQ program from the IFQ program in order to get the IFQ portion implemented in time for the 1999 fisheries.

\* Council review and comment on the proposed rulemaking for this program could occur in October, or possibly in December of 1998.

\* If in place for the 1999 fisheries, fees would be first collected by NMFS at the end of 1999, or the beginning of the year 2000.

\* The North Pacific Loan Program will continue to require separate Congressional appropriation to remain functional in 1999.

\* The next meeting of the Committee is tentatively scheduled for July 7, 1998 in Juneau. Primary focus of that meeting will be on NMFS budget review and related issues, including a review of cost estimates from the CDQ groups (related to allowable deductions), and reimbursement of State costs.

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director



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Anchorage, AK 99501-2252

Telephone: (907) 271-2809

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May 11, 1998

Gordon Blue  
Crab Reduction And Buyback Group  
c/o Alaska Crab Coalition  
3901 Leary Way N.W., Suite 6  
Seattle, WA 98107

Dear Gordon:

I am writing concerning further work on the crab vessel buyback program. You and the other members of your workgroup have contributed enormously to development of the proposal we reviewed last October. As you will recall, the Council reviewed the proposal then, and on October 10, 1997, sent a letter to NMFS requesting the Secretary to move ahead with development and implementation of the program under Section 312(b) of the Magnuson-Stevens Act. We should be ready to move ahead quickly at the October 1998 meeting, directly after the Council takes final action on the LLP amendments that will determine how many vessels will be left in the fishery.

I am going to bypass the Dutch Harbor meeting as far as taking up the buyback. Our agenda is already packed with such items as inshore-offshore 3, moratorium rollover, pollock CDQ rollover and new requirements of the Sustainable Fisheries Act such as essential fish habitat, overfishing definitions, etc., that need to be completed in June. Also, we need to see the buyback guidelines that NMFS is preparing before moving ahead too quickly with your proposal.

October seems a ways off, but there are several things that need to be done between now and then to smooth the way for further processing of the buyback program. First, in the rush of events last fall, the plan that the Council considered in September was revised before submittal to NMFS in December. While I feel comfortable that the revisions were made in good faith to improve the proposed program, it would be useful to recirculate the proposed plan to the Capacity Reduction and Buyback (CRAB) Group to ensure everyone is up to speed on the latest proposal, and can support it. It seems to me that a signature page with all the members on it would be quite compelling to the Council and Secretary to move ahead briskly with further development of the program. Second, it would also be good if you could take a shot at answering the questions in the attached memo from NMFS. The answers will need to be part of the record for the Council and Secretary to use in making their determinations on the soundness of the program, and whether conforming plan amendments are needed to our LLP program, e.g. the A-B license provision.

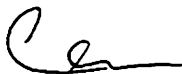
Although I think that the Act is quite clear in assigning responsibility to the Secretary for taking the lead in developing and implementing the buyback program, it seems apparent now that NMFS is going to remand it back to the Council for in-depth consideration, far beyond the cursory look we gave it last September. So we will want to know that (1) we have the latest proposal, (2) it has been vetted through the crab industry and has a high likelihood of being accepted, (3) it conforms with our LLP program, and (4) if not, what compromises are going to be made.



Gordon Blue  
CRAB Group  
May 11, 1998  
Page 2

The October meeting will be a good time for this all to come together, and because it is in Seattle, it will be readily accessible to the industry. So, let's plan on having a detailed discussion then, directly after the LLP and in the meantime, finish up the work that needs to be done to move the proposal smoothly ahead. Thanks for your hard work thus far on the proposal.

Sincerely,



Clarence Pautzke  
Executive Director

Attachments

copy to: Sue Salvesson

# The CRAB Group

Capacity Reduction And Buyback for crab licenses in the Bering Sea and Aleutians

Clarence G. Pautzke, Executive Director  
North Pacific Fisheries Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, Alaska 99501-2252

RECEIVED

MAY 19 1998

May 13, 1998

Dear Dr. Pautzke:

N.P.F.M.C

I forward our request to be placed on the June Council agenda. I would like to say that we would not ask for this time during the very busy June meeting but for the reasons outlined below, and we are not intending to ask the Council to spend a lot of time - in fact, there may be necessity for no more than an affirmative report that (1) proposed general regulations for industry funded buybacks have been published and (2) a draft business plan is available for review by those who are interested.

We have worked to define the parameters of a successful license buyback program for our fisheries and have enjoyed the support of the Council in this effort. The necessity for this time to be scheduled stems from the fact that NMFS has still not made guideline general regulations available to the Council and the public, and the substance of these regulations will necessarily impact consideration of the program. If they are not available before June, a request from the Council may help to prevent delay past October. We need to guard against being simply relegated to the dustbin of the Office of Sustainable Fisheries ("OSF") through the ready presumption by OSF of indifference on the part of the NPFMC.

Please recall that during the April meeting at least some members of the Council wished to send such a request - a letter urging speedy compliance with the request of the Senators of Oregon, Washington and Alaska to get these draft proposed rules published without further delay. This suggestion was quashed by Lisa Lindeman, NOAA General Council, who noted that the Council was constrained from taking any action in virtue of the fact that this item had not been properly placed in agenda. This occurred during an intense grilling of Mr. Ginter, when he tried to defend the inexplicable delay that publication of these proposed regulations has experienced in Dr. Matlock's office. Please recall that the discussion also included a rebuttal by you, of Mr. Ginter's assertion that he was, at that moment, "consulting" for the Secretary of Commerce with NPFMC, according to Section 312(b)(4) of the Magnuson-Stevens Act - because Dr. Matlock's letter had been sent to the Council after such delay that the matter could not be placed on the agenda.

Please note that in the April meeting, I said that an analysis of the addendum to the Matlock letter had been made by the CRAB group, most of the material requested of the Council and the Industry is in fact readily available, and we stand ready to assist the Council in assembling the materials.

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The present situation is this: I have been informed by Jack Dunnigan of Atlantic States Marine Fisheries Commission that he had prepared a "very rough draft" of a "consolidated" rulemaking proposal and presented it to Dr. Matlock's office prior to the Federal Investment Task Force meeting in Seattle; furthermore, he stated to the assembled Task Force members, who are very much interested in the development of these programs, that the agency was under a lot of pressure, and very much wished to complete the work and move these regulations forward, and that necessary changes "...would not be very much."

Jay Ginter, at my invitation as a member of the Task Force, and by virtue of his appointment as liaison to the NPFMC for buyback proposals, stopped in at the FITF meetings on Friday and Saturday to monitor discussion of Buyback programs. Jay was returning to Juneau from Silver Springs, to brief on Buyback and other matters and had not been made aware that ASMFC had handed in any work on the proposed regulations. Furthermore, a contact of mine that is an employee of the agency has reported that "no one at Silver Springs seems to be very excited about doing anything about the rulemaking." I am concerned that this may be so, and that very simple, though necessary, steps may not be taken by the agency as a result.

We received yesterday (May 13), through Ted Kronmiller, who has assisted us in the effort to design a buyback for BSAI Crab fisheries, a letter from Terry Garcia, outlining his understanding of the status of the proposed rulemaking, which is appended to this fax. This letter makes clear that the Deputy Administrator has not been fully informed of the very slight nature of the necessity of revision. The industry draft, and the NMFS draft, referred to in the Garcia letter, have both been complete for more than five months.

NOAA has been sitting on these draft regulations since last year without good reason for doing so. The public right to review and comment on the regulations is being obstructed in this delay. The assertion, first advanced by Dr. Matlock's office, that the "...rulemaking process will not postpone active consideration of [...] the buyback proposed for the Bering Sea and Aleutian Islands crab fishery which NMFS is already considering..." is patent sophistry - the consideration of the proposal must next move to consideration of specific buyback implementing plans and regulations. It is not only that "... NMFS' Staff has reviewed the first draft of the business plan for this proposal and provided comments and questions to the planners." These comments and questions were received and responded to in the beginning of March, and the responses were discussed with the agency, and substantial resolution reached early last month, and preliminary drafting of the proposed buyback implementation plan begun, by the CRAB group, over a month ago. We are arrived at impasse - how are we to complete a specific plan without general regulations? Having understood the necessity of general regulations, how can the agency not understand the obstruction that is resulting from their failure to initiate the public process that will lead to their implementation? This is particularly frustrating to us because it was the realization that the necessary specifics of plan development could not be accomplished in a vacuum, that led us to expend considerable resources in preparation of draft general regulations and make this work available in proper fashion to NOAA in January.

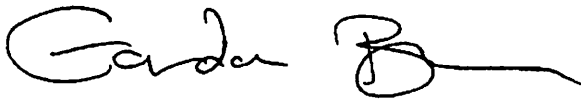
Clarence, if the crab buyback is placed on the June agenda, the Council may receive a brief report on

3

progress of the CRAB group in program development and the Council may comment to the CRAB group, the industry, the staff, the agency or the public if the Council chooses to do so. If the buyback is not placed on the agenda and there has been no movement of the rulemaking, the Council may again be constrained from any comment, and the agency will be able to continue to stall development of the program - and so we may arrive at the October meeting, more than a year after the request of the Council that the Secretary work with the CRAB group to develop an industry-funded buyback plan for the BSAI crab fisheries - and more than TWO years since passage of the enabling legislation, the Magnuson - Stevens Fishery Conservation and Management Act - without the Secretary having taken even the first step.

September marks the beginning of the 1998-1999 crab fisheries. We can expect increased participation in fisheries - an influx of effort - and an exacerbation of safety and financial difficulties that this program is attempting to address.

Sincerely,



Gordon Blue, CRAB workgroup coordinator